



601 South Figueroa Street • Suite 1950 • Los Angeles, California 90017

Telephone: 213.262.8000 • Facsimile: 213.335.7776

Jason L. Liang
(213) 262-8002 (Direct)
jliang@lianglyllp.com


December 8, 2023

MEMO ENDORSED

VIA ECF

Hon. Judge Edgardo Ramos
United States District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
440 Foley Square
New York, NY 10007

The individual defendants' request for an extension of time to file their opposition to the motion is granted. Due to the federal holiday, the opposition is due January 16, 2024. Plaintiffs' reply is due by January 23, 2024. SO ORDERED.


Edgardo Ramos, U.S.D.J.
Dated: 12/12/2023
New York, New York

Re: *Khan Funds Management America, Inc. et al. v. Nations Technologies Inc. et al., Civil Action No. 1:22-cv-05055-ER*

Dear Judge Ramos:

This letter is being submitted by Jason L. Liang and Minyao Wang. Mr. Liang represents Defendants Yingtong Sun and Baoxin Huang. Mr. Wang represents Defendants Zhaoxue Luo and Junee Yu (collectively with Mr. Sun and Mr. Huang, the “Individual Defendants”), all of whom are citizens of and reside in the People’s Republic of China. We write concerning Plaintiffs Khan Funds Management America, Inc.’s and Xuefeng “Eric” Dai’s (together “Plaintiffs”) Motion for Alternative Service (the “Motion”) (ECF Nos. 87-89). The filing of this letter does not constitute a general appearance or a waiver by the Individual Defendants of any of their rights, defenses, or remedies, including defenses related to service of process or personal jurisdiction.

Plaintiffs filed the Motion with this Court on November 17, 2023. However, we have only recently been made aware of the Motion and the fact that Plaintiffs are seeking an order from the Court to allow alternative service on ***all Individual Defendants***, in addition to Nations Technologies, Inc. (“NTI”). This is because Plaintiffs (i) failed to serve the Motion on us or otherwise give us notice of the Motion,¹ and (ii) informed this Court during the November 3, 2023 status conference that they intended to bring a service-related motion against NTI ***only***.² Indeed, the service issue related to the Individual Defendants never came up during the status conference. The Motion as it relates to the Individual Defendants therefore violates this Court’s

¹ Plaintiffs are well aware that we have not entered notices of appearance in this case (*See* ECF No. 88 at 9). As such, we do not get electronic notices of filings on this docket.

² *See* ECF No. 86 (November 3, 2023 status conference transcript) at 6:10-12 (Plaintiffs contemplating “a motion for alternative service in short order as to the Nations China entity”) (emphasis added)

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Individual Rule 2(A)(ii), which *requires* that a pre-motion conference be held prior to the filing of a motion, subject to exceptions not applicable here. Moreover, counsel for Plaintiffs never sought to meet and confer with either of us about the issues raised by the Motion.

We note that Plaintiffs' current counsel is the third set of attorneys for Plaintiffs who have appeared in this Matter. When Plaintiffs first raised the issue of service under the Hague Convention in or about July 2022, they were represented at the time by Bracewell LLP ("Bracewell"). At that time, when Plaintiffs' then-counsel sought to conduct a pre-motion meet and confer with the parties concerning Plaintiffs' improper effort to bypass the Hague Convention, Bracewell included both of us as counsel for the Individual Defendants, in addition to counsel for NTI. And through the parties' meet and confer, counsel for the Individual Defendants presented Plaintiffs with a compromise that would have made service on the Individual Defendants under the Hague Convention *easier* for Plaintiffs. Attached hereto as **Exhibit A** is a true and correct copy of the email meet and confer correspondence between counsel for the Individual Defendants and Bracewell. Further, when a status conference on service-related issues was held before the Court in or about July 2022, both Mr. Liang and Mr. Wang appeared on behalf of their respective clients and presented the Individual Defendants' position on service to the Court. Plaintiffs are thus well aware that the Individual Defendants have been and are represented by undersigned counsel.

Plaintiffs thereafter failed to pursue the Hague Convention service process on a diligent basis. By their own admission, they transmitted documents to the Government of China for service in late April 2023, almost a year after the aforementioned status conference during which Your Honor instructed them to follow the procedures of the Hague Convention and four months after the filing of the amended complaint in this case. *See* ECF No. 89 ¶ 5.

As soon as we were made aware of Plaintiffs' improper Motion and the relief sought therein, we reached out to Plaintiffs' counsel to meet and confer over Plaintiffs' Motion, specifically Plaintiffs' failure to have a pre-motion conference and their failure to serve or otherwise give notice of the Motion to the Individual Defendants. The parties were not able to reach any agreement on the issues raised by counsel for the Individual Defendants. Attached hereto as **Exhibit B** is a true and correct copy of the meet and confer email correspondence between counsel for the Individual Defendants and counsel for Plaintiffs.

Thus, to the extent Plaintiffs seek relief against our respective clients, we do not believe that these issues are properly before the Court. This is particularly true because (1) Plaintiffs have known that we are counsel for the respective Individual Defendants since at least July 2022, (2) we both have participated in a prior status conference before the Court concerning the issue of service on the Individual Defendants, (3) during the November 3, 2023 status conference before the Court concerning Plaintiffs' forthcoming Motion, Plaintiffs failed to mention that they intended to seek relief against the Individual Defendants and expressly stated that they intended to bring a motion only against NTI, and (4) Plaintiffs failed to serve us with the Motion or otherwise give us notice of the Motion.

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We understand that NTI has agreed to accept service of Plaintiffs' amended complaint, which would resolve the Motion as to NTI. To the extent Plaintiffs are seeking relief against the Individual Defendants, we respectfully request that a status conference be scheduled with Your Honor to address the issues raised herein. We believe that Plaintiffs have failed to follow the letter and the spirit of rules governing pre-motion conferences and proper notice to adverse parties. This is especially true in light of the parties' past practices concerning these very issues.

In light of the improper filing by Plaintiffs, the Court should strike the Motion as it relates to the Individual Defendants and order Plaintiffs to comply with controlling procedural rules and follow the requirements of due process if they want to pursue a new motion against the Individual Defendants. At an absolute minimum, the Individual Defendants should be given a meaningful opportunity to assess and if necessary brief the issues raised in Plaintiffs' Motion. Because undersigned counsel have only been recently made aware of the Motion, they have been unable to, so far, confer with their clients who are based in China about the Motion. Fairness requires that they be given the time and opportunity to do so. In light of the upcoming holiday period in both countries and undersigned counsel's travel plans during the holiday period, the Individual Defendants respectfully submit that they should be afforded until January 15, 2024 to oppose or otherwise respond to the Motion, if the Court is not inclined to strike that Motion.

* * *

Thank you for your consideration of these issues.

Respectfully submitted,



LIANG LY LLP

Jason Liang

Counsel for Defendants Yingtong Sun
and Baoxin Huang

Respectfully submitted,



Minyao Wang

Counsel for Defendants Zhaoxue Luo
and June Yu

Minyao.wang.jd@gmail.com

678-429-2663